IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 305 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
FEBRUARY 01, 2006.

Heard Smt. Joshi, learned counsel for the petitioners – original plaintiffs, Shri Sambre, learned counsel for respondent No.2 and learned Assistant Government Pleader for respondent No. 1.

After hearing the counsels, it is apparent that the petitioners have got a plan sanctioned from the Municipal Council but instead of raising construction as per said construction plan, excess construction has been made in both side margins i.e. rear margin and also front margin.

The learned counsel for the petitioners has contended that this has happened on account of bonafide mistake while understanding Table

No.3 of Standardised Bye laws and Building Control Rules.

Shri Sambre, learned counsel for respondent No.2 states that there cannot be any bonafide mistake in this respect because the map submitted for sanction of drawing was by Competent Architect and it was sanctioned by Municipal Council and knowingly it has been breached and construction has been raised contrary to it. He further states that inspection was taken and the structure which is only contrary to sanctioned map and in excess of FSI is being demolished. He further states that construction which is within permissible FSI will not be removed.

A perusal of order passed by the Court below reveals that Court below has rightly appreciated the controversy.

The learned counsel for the petitioners argues that the petitioners can move for compounding of construction which is stated to be unauthorised by the Municipal Council.

However, the learned counsel for the Municipal Council points out that construction which is raised in excess of FSI in side margins

i.e. rear and front margins will not be compounded.

The learned counsel for the petitioners further argues that their suit will itself become infructuous. The position which emerges from the record at this stage is that the petitioners – plaintiffs have knowingly violated the sanctioned map and have raised the unauthorised construction at their own risk.

Therefore, I do not find any jurisdictional error or perversity in the order passed by the Court below. No case is made out for interference in writ petition. Writ Petition is dismissed. No order as to costs.

The learned counsel for the petitioners seeks interim protection so as to enable the petitioners to challenge the order further. However, in view of the facts stated above, I am not inclined to grant any further protection in the matter.

An ordinary copy of this order be furnished to the learned counsel for the petitioners.

JUDGE

*GS.